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DEPARTMENT OF EDUCATION

34 CFR Parts 36 and 668

RIN 1801-AA17

[Docket ID ED-2018-OGC-0004]

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) issues these final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation. An initial "catch-up" adjustment was required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act). These final regulations provide the 2018 annual inflation adjustments being made to the penalty amounts in the Department's final regulations published in the *Federal Register* on April 20, 2017 (2017 final rule).

DATES: These regulations are effective January 15, 2018. The adjusted CMPs established by these regulations are applicable only to civil penalties assessed after January 15, 2018, whose associated violations occurred after November 2, 2015.

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#### SUPPLEMENTARY INFORMATION:

##### Background:

A CMP is defined in the Inflation Adjustment Act (28  
U.S.C. 2461 note) as any penalty, fine, or other sanction  
that is (1) for a specific monetary amount as provided by  
Federal law, or has a maximum amount provided for by  
Federal law; (2) assessed or enforced by an agency pursuant  
to Federal law; and (3) assessed or enforced pursuant to an  
administrative proceeding or a civil action in the Federal  
courts.

The Inflation Adjustment Act provides for the regular  
evaluation of CMPs to ensure that they continue to maintain

their deterrent value. The Inflation Adjustment Act required that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every four years thereafter. The Department published its most recent cost adjustment to its CMPs in the *Federal Register* on April 20, 2017 (82 FR 18559), and those adjustments became effective on the date of publication.

The 2015 Act (section 701 of Pub. Law 114-74) amended the Inflation Adjustment Act to improve the effectiveness of CMPs and to maintain their deterrent effect.

The 2015 Act requires agencies to: (1) adjust the level of CMPs with an initial "catch-up" adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation. Catch-up adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year the penalty was last adjusted by a statute other than the Inflation Adjustment Act, and the October 2015 CPI-U. Annual inflation adjustments are based on the percentage change between the October CPI-U preceding the date of each statutory adjustment, and the prior year's October CPI-U.<sup>1</sup> The Department published an IFR with the

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<sup>1</sup> If a statute that created a penalty is amended to change the penalty amount, the Department does not adjust the penalty in the year following the adjustment.

initial "catch-up" penalty adjustment amounts on August 1, 2016 (81 FR 50321).

In these final regulations, based on the CPI-U for the month of October 2017, not seasonally adjusted, we are annually adjusting each CMP amount by a multiplier for 2018 of 1.02041, as directed by the Office of Management and Budget (OMB) Memorandum No. M-18-03 issued on December 15, 2017.

#### The Department's Civil Monetary Penalties

The following analysis calculates new CMPs for penalty statutes in the order in which they appear in 34 CFR 36.2. The penalty amounts are being adjusted up based on the multiplier of 1.02041 provided in OMB Memorandum No. M-18-03.

Statute: 20 U.S.C. 1015(c)(5).

Current Regulations: The CMP for 20 U.S.C. 1015(c)(5) (Section 131(c)(5) of the Higher Education Act of 1965, as amended (HEA)), as last set out in statute in 1998 (Pub. Law 105-244, title I, §101(a), October 7, 1998, 112 Stat. 1602), is a fine of up to \$25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics. In the 2017 final rule, we increased this amount to \$36,849.

New Regulations: The new penalty for this section is \$37,601.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M-18-03, the new penalty is calculated as follows:  $\$36,849 \times 1.02041 = \$37,601.09$ , which makes the adjusted penalty \$37,601, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1022d(a)(3).

Current Regulations: The CMP for 20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA), as last set out in statute in 2008 (Pub. Law 110-315, title II, §201(2), August 14, 2008, 122 Stat. 3147), provides for a fine of up to \$27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs. In the 2017 final rule, we increased this amount to \$30,694.

New Regulations: The new penalty for this section is \$31,320.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M-18-03, the new penalty is calculated as follows:  $\$30,694 \times 1.02041 = \$31,320.46$ , which makes the adjusted penalty \$31,320, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1082(g).

Current Regulations: The CMP for 20 U.S.C. 1082(g) (Section 432(g) of the HEA), as last set out in statute in 1986 (Pub. Law 99-498, title IV, §402(a), October 17, 1986, 100 Stat. 1401), provides for a fine of up to \$25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program. In the 2017 final rule, we increased this amount to \$54,789.

New Regulations: The new penalty for this section is \$55,907.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M-18-03, the new penalty is calculated as follows:  $\$54,789 \times 1.02041 = \$55,907.24$ , which makes the adjusted penalty \$55,907, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1094(c)(3)(B).

Current Regulations: The CMP for 20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA), as set out in statute in 1986 (Pub. Law 99-498, title IV, §407(a), October 17, 1986, 100 Stat. 1488), provides for a fine of up to \$25,000 for an IHE's violation of Title IV of the HEA or its implementing regulations. Title IV authorizes various programs of student financial assistance. In the 2017 final rule, we increased this amount to \$54,789.

New Regulations: The new penalty for this section is \$55,907.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M-18-03, the new penalty is calculated as follows:  $\$54,789 \times 1.02041 = \$55,907.24$ , which makes the adjusted penalty \$55,907, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1228c(c)(2)(E).

Current Regulations: The CMP for 20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education Provisions Act), as set out in statute in 1994 (Pub. Law 103-382, title II, §238, October 20, 1994, 108 Stat. 3918), provides for a fine of up to \$1,000 for an educational organization's failure to disclose certain information to minor students and their parents. In the 2017 final rule, we increased this amount to \$1,617.

New Regulations: The new penalty for this section is \$1,650.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M-18-03, the new penalty is calculated as follows:  $\$1,617 \times 1.02041 = \$1,650.00$ , which makes the adjusted penalty \$1,650, when rounded to the nearest dollar.

Statute: 31 U.S.C. 1352(c)(1) and (c)(2)(A).

Current Regulations: The CMPs for 31 U.S.C. 1352(c)(1) and (c)(2)(A), as set out in statute in 1989, provide for a fine of \$10,000 to \$100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts. In the 2017 final rule, we increased these amounts to \$19,246 to \$192,459.

New Regulations: The new penalties for these sections are \$19,639 to \$196,387.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M-18-03, the new minimum penalty is calculated as follows:  $\$19,246 \times 1.02041 = \$19,638.81$ , which makes the adjusted penalty \$19,639, when rounded to the nearest dollar. The new maximum penalty is calculated as follows:  $\$192,459 \times 1.02041 = \$196,387.09$ , which makes the adjusted penalty \$196,387, when rounded to the nearest dollar.

Statute: 31 U.S.C. 3802(a)(1) and (a)(2).

Current Regulations: The CMPs for 31 U.S.C. 3802(a)(1) and (a)(2), as set out in statute in 1986 (Pub. Law 99-509, title VI, §6103(a), Oct. 21, 1986, 100 Stat. 1937), provide for a fine of up to \$5,000 for false claims and statements made to the Government. In the 2017 final rule, we increased this amount to \$10,957.



New Regulations: The new penalty for this section is \$11,181.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M-18-03, the new penalty is calculated as follows:  $\$10,957 \times 1.02041 = \$11,180.63$ , which makes the adjusted penalty \$11,181, when rounded to the nearest dollar.

Executive Orders 12866, 13563, and 13771

#### Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as "economically significant" regulations);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

We have determined that these final regulations: (1) exclusively implement the annual adjustment; (2) are consistent with OMB Memorandum No. M-18-03; and (3) have an annual impact of less than \$100 million. Therefore, based on OMB Memorandum No. M-18-03, this is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that

might result from technological innovation or anticipated behavioral changes.”

We are issuing these final regulations as required by statute and in accordance with OMB Memorandum No. M-18-03. The Secretary has no discretion to consider alternative approaches as delineated in the Executive order. Based on this analysis and the reasons stated in the preamble, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

Under Executive Order 13771, if the Department proposes for notice and comment or otherwise promulgates a new regulation that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two existing regulations for elimination. For fiscal year 2018, any new incremental costs associated with the new regulation must be fully offset by the elimination of existing costs through the repeal of at least two regulations. These final regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

#### Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties

the opportunity to comment on proposed regulations. However, section 4(b)(2) of the 2015 Act (28 U.S.C. 2461 note) provides that the Secretary can adjust these 2018 penalty amounts notwithstanding section 553 of title 5, United States Code. Therefore, the requirements of 5 U.S.C. 553 for notice and comment and delaying the effective date of a final rule do not apply here.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The formula for the amount of the inflation adjustments is prescribed by statute and is not subject to the Secretary's discretion. These CMPs are infrequently imposed by the Secretary, and the regulations do not involve any special considerations that might affect the imposition of CMPs on small entities.

#### Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

#### Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

#### Assessment of Educational Impact

Based on our own review, we have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects in 34 CFR Part 36

Claims, Fraud, Penalties.

Dated: January 10, 2018.

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Betsy DeVos,  
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 36 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 36--ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

1. The authority citation for part 36 continues to read as follows:

AUTHORITY: 20 U.S.C. 1221e-3 and 3474; 28 U.S.C. 2461 note, as amended by section 701 of Pub. Law 114-74, unless otherwise noted.

2. Section 36.2 is amended by revising Table I to read as follows:

§36.2 Penalty adjustment.

\* \* \* \* \*

Table I, Section 36.2.--Civil Monetary Penalty Inflation Adjustments

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1015(c) (5) (Section	Provides for a fine, as set by Congress in 1998, of up to \$25,000 for	\$37,601



131(c)(5) of the Higher Education Act of 1965 (HEA))	failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics.	
20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA)	Provides for a fine, as set by Congress in 2008, of up to \$27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs.	\$31,320
20 U.S.C. 1082(g) (Section 432(g) of the HEA)	Provides for a civil penalty, as set by Congress in 1986, of up to \$25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program.	\$55,907
20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA)	Provides for a civil penalty, as set by Congress in 1986, of up to \$25,000 for an IHE's violation of Title IV of the HEA, which authorizes various programs of student financial assistance.	\$55,907
20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education	Provides for a civil penalty, as set by Congress in 1994, of up to \$1,000 for an educational organization's failure to	\$1,650

Provisions Act)	disclose certain information to minor students and their parents.	
31 U.S.C. 1352(c) (1) and (c) (2) (A)	Provides for a civil penalty, as set by Congress in 1989, of \$10,000 to \$100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts.	\$19,639 to \$196,387
31 U.S.C. 3802(a) (1) and (a) (2)	Provides for a civil penalty, as set by Congress in 1986, of up to \$5,000 for false claims and statements made to the Government.	\$11,181

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#### PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

3. The authority citation for part 668 continues to read as follows:

AUTHORITY: 20 U.S.C. 1001-1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, 1221e-3, and 3474; Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

§ 668.84 [Amended]

4. Section 668.84 is amended by, in paragraph (a), removing the number "\$27,500" and adding, in its place, the number "\$55,907".

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